

REMARKS:

Claims 134, 136-138, 142-145 and 152-172 were pending in this application. Claims 159-169 have been cancelled without prejudice or disclaimer, and Applicant reserves the right to present these claims in a divisional application. Therefore, claims 134, 136-138, 142-145, 152-158 and 170- 172 are now pending in this application.

The Examiner has rejected independent claims 134 and 170 under 35 U.S.C. § 103(a) based on U.S. Patent No. 4,766,088 to Kono, et al. in view of U.S. Patent No. 5,470,771 to Fujii et al. and U.S. Patent No. 5,449,629 to Kajita. Applicant respectfully traverses these rejections.

Applicant respectfully submits that with respect to independent claims 134 and 170, the Examiner has not properly established a *prima facie* case of obviousness. First, Applicant submits that the cited art does not teach or suggest all of the limitations of the claims. Thus, even if the references were combined as suggested by the Examiner, the resulting combination would not include all of the limitations of these claims. Second, Applicant submits that the Examiner has not, in fact, established a proper motivation to combine these references.

With respect to claim 134, Applicant submits that none of the cited references teaches a “a peripheral transistor having a single gate structure containing a third conductive film and a fourth conductive film that overlie a second channel region and are in contact over their cross-sections ... wherein said ... third[] and fourth conductive films each have a conductivity that is substantially the same” The Examiner appears to allege that Fujii teaches this limitation. Applicant respectfully disagrees. Fujii is directed to a “semiconductor memory device,” Fujii at col. 1, lines 10-11, and does not even mention a “peripheral transistor” as recited in claim 134. Thus, Fujii cannot disclose “a peripheral transistor ... wherein said ... third[] and fourth conductive films each have a conductivity that is substantially the same.” In fact, Fujii does not appear to disclose *any* “conductive films” that “are in contact over their cross-sections” *and* that “each have a conductivity that is substantially the same” (as in claim 134). Accordingly, even assuming *arguendo* that the Examiner’s statements regarding Fujii’s “floating gate” and “control gate” were true (i.e., “a floating gate which has a portion with a lower conductivity than other portions of the floating gate and the control gate,” Office Action at 4), Applicant fails to see how such teachings would apply to claim 134’s “peripheral transistor” having a “third” and “fourth”

“conductive film[s]” which “each have a conductivity that is *substantially the same*” (emphasis added).

Similarly, Kajita does not teach or suggest such this feature of claim 134’s “peripheral transistor.” While Kajita discloses “gate electrode 28a” and “polysilicon pattern 60b,” *see* Figs. 6A-6C and col. 11, line 31 to col. 12, line 11, Kajita does not specify that “28a” and “60b” “each have a conductivity that is substantially the same,” as is recited in claim 134. Accordingly, even if Kono, Fujii, and Kajita were combined as suggested by the Examiner, the proposed combination would not teach all of the limitations of claim 134. For this reason, Applicant submits that the obviousness rejection of this claim should be removed. *See* MPEP § 2143.03.

Moreover, Applicant respectfully submits that the Examiner has not established a proper motivation to modify Kono in view of Fujii and Kajita. As stated above, Fujii does not disclose a “peripheral transistor” as in claim 134. The Examiner’s suggestion that such motivation is provided because the proposed combination of Kono and Fujii would allow “the device to operate more effectively” is conclusory and ignores deficiencies in the teachings of Fujii (e.g., the lack of any teaching regarding a “peripheral transistor”). Moreover, the Examiner’s further suggestion regarding the alleged motivation provided by Kajita is apparently derived from the Applicant’s claims, as Kajita does not appear to include any teachings regarding “the use of undoped polysilicon.” *See* Office Action at 4.

In sum, Applicant submits that not only has the Examiner failed to establish a proper motivation to combine, but also that even assuming a motivation to combine the references did exist, the resulting combination would not teach all of the limitations of claim 134. Applicant therefore requests removal of the § 103 rejection with respect to claim 134 and its dependent claims.

Applicant submits that claim 170 and its dependent claims are patentably distinct over the cited art for at least the reasons cited for claim 134.

CONCLUSION:

Applicants submit the application is in condition for allowance, and an early notice to that effect is requested.

The Commissioner is authorized to charge any fees that may be required, or credit any overpayment, to Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C. Deposit Account No. 501505/5957-82403/DMM.

Respectfully submitted,

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